

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**CS-535-2017**

- 1. PRINCE KALEMERA H.KIMERA**
- 2. PRINCESS NALINYA NANDAULA**

*(Administrator of the estate of the Late H.R.H Sir Daudi Chwa II)* ..... **PLAINTIFFS**

**VERSUS**

- 1. THE KABAKA OF BUGANDA**
- 2. BUGANDA LAND BOARD**
- 3. THE COMMISSIONER LAND REGISTRATION**
- 4. THE ATTORNEY GENERAL OF UGANDA** ..... **DEFENDANTS**

**BEFORE:** HON JUSTICE DR. FLAVIAN ZEJJA

**RULING**

This is a ruling in respect of preliminary objections raised by counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants which he intimated that if determined, would have the effect of disposing off the entire suit.

In a bid to thoroughly and conclusively determine the said objections I find it imperative to appreciate the background of the matter leading to the current objections.

The 1<sup>st</sup> plaintiff herein first sued the 2<sup>nd</sup> and 4<sup>th</sup> defendants in the Family Division vide CS-180-2017 seeking to protect property comprised in FC 18454 Kyadondo Block 273 Land at Masajja measuring about 16sq miles (*suit land*) belonging to the

estate of the late Sir Daudi Chwa II which he claimed was wrongfully returned to and is in the possession and control of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The matter was later transferred to the Land Division and re-registered as CS-535-2017. Before the matter took off the 1<sup>st</sup> plaintiff filed an amended plaint wherein the 1<sup>st</sup> and 3<sup>rd</sup> defendants were added as parties but withdrew the suit against the 4<sup>th</sup> defendant. Later the 1<sup>st</sup> plaintiff filed an application for a temporary injunction against the 1<sup>st</sup> and 2<sup>nd</sup> defendants vide MA-1086-2017 seeking an order restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants or their agents/servants from acquiring compensation payment from UNRA in respect of the Kampala Jinja expressway project in respect of the suit land pending the determination of the main suit. The application was heard and granted in the 1<sup>st</sup> plaintiff's favor on the 10/08/2017. On the 17/08/2017 the 2<sup>nd</sup> plaintiff together with Prince David Namugala Mawanda (*formerly 2<sup>nd</sup> plaintiff*) and Prince Moses Kimera Luawata (*formerly 3<sup>rd</sup> plaintiff*) applied to join the suit as plaintiffs claiming to be the administrators of the estate of the H.H Sir Daudi Chwa II. Court granted the application and directed the plaintiffs to attach the Letters of Administration to the pleadings and file it with the amended pleadings.

The defendants filed a defence to the amended plaint. On the 11<sup>th</sup> July 2018 the main suit was dismissed for want of prosecution with costs to the defendants. The plaintiffs then file MA-1136-2018 for reinstatement of the main suit and it was granted. The plaintiffs yet again filed MA-654-2019 seeking to amend their plaint and remove the name of the then 3<sup>rd</sup> plaintiff Prince Moses Luswata by reason of death, add the 4<sup>th</sup> respondent (*AG*) as a defendant to the suit and also added additional properties which they claimed to have discovered that belong to the estate of the late Daudi Chwa II which were allegedly wrongfully returned by the 4<sup>th</sup> defendant to the 1<sup>st</sup> and 2<sup>nd</sup> defendants. It was established during the hearing of that application that Prince Namugala Mawanda (*formerly the 2<sup>nd</sup> plaintiff*) had written a notice of withdrawal from the main suit on the 30/7/2019. The application was heard and court granted leave to the plaintiffs to amend their plaint to remove the name of the 3<sup>rd</sup>



plaintiff, to add the 4<sup>th</sup> respondent (AG) as a defendant and include the discovered properties which they claim to belong to the late Daudi Chwa II. It was ordered that all these amendments be filed and served within 14 days from the date of the ruling.

On the 8<sup>th</sup> June 2020 the plaintiffs filed in court an amendment of their plaint as directed by court and the 1<sup>st</sup> and 2<sup>nd</sup> defendants indicated in their reply to the amended plaint that they would raise preliminary objections and pray that the amended plaint be struck out on the following grounds;

- a) That the amended plaint was filed out of time contrary to the court order issued on 22<sup>nd</sup> May 2020.
- b) That the amended plaint is contrary to the court order issued on the 22<sup>nd</sup> May 2020 as it brings in new facts contrary to what the court ordered.
- c) That the plaint discloses no cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> defendants
- d) That the plaintiff's suit is barred by limitation and as such is an illegality and abuse of court process.
- e) That the original plaint disclosed no cause of action and was a nullity which could not be cured by an amendment.
- f) That the plaintiff lacks locus standi to institute the suit.

Court allowed both parties to file written submissions in respect to the objections which they obliged. The record shows that the plaintiffs have since filling this suit instructed various law firms to represent them. Their amended plaint was drafted by Byamukama, Kaboneke & Co. Advocates, Nakasagga & Co. Advocates and F.X Ogwado & Co. Advocates. It is unclear if all these firms still have instructions to represent the plaintiffs or a new firm was instructed. However, the submissions indicate that the plaintiffs were represented by F.X Ogwado & Co. Advocates. It is safe to say that the said firm is still representing the plaintiffs. The 1<sup>st</sup> and 2<sup>nd</sup> defendants were represented by K.K Advocates. No representation or submissions were made for the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

I shall first deal with the objection raised by counsel for the defendants to the effect that the amended complaint was filed late. Counsel for the defendants submitted that the amended complaint was filed on 8<sup>th</sup> June 2020, which was three days after the date of filing which was supposed to be 5<sup>th</sup> June 2020. In reply counsel for the defendants, relying on Order 51 rule 2 CPR, submitted that the amended complaint was filed on the 13<sup>th</sup> day from the date of the order when one excludes the public holiday, Sundays and the date of the order. In rejoinder counsel for the defendants submitted that Order 51 rule 2 CPR can only be relied upon if the day for doing that particular act was falling on any of the days mentioned in the Order. Counsel stated that Order 51 rules 2 and 8 CPR was inapplicable in the present circumstances since there was a specific order of court.

From the record it is clear that the court issued an order for amendment of the complaint to be filed within 14 days from the 22<sup>nd</sup> May 2020. I have looked at the calendar. The 22<sup>nd</sup> May 2020 was a Friday and it was the date the order was issued hence time started running from the next day which was a Saturday 23<sup>rd</sup> May 2020. The last day for filing was therefore 5<sup>th</sup> of June 2020 which was a Friday.

There seems to be a misunderstanding of the application of rule 2 of Order 51. The rule provides:

*"2.Exclusion of Sundays, etc.*

*Where any limited time Less than Six days from after any date or event is appointed or allowed for doing any act or taking any proceedings, Sunday, Christmas day, Good Friday, and any other day appointed as a public Holiday shall not be reckoned in the computation of the limited time"(Emphasis added)*

From the above rule, Sunday, Christmas, Good Friday and public holidays are not excluded if the days within which court directs any action to be taken exceeds 6

days. The days are only excluded if the action to be taken is to be done within 6 days or less.

Nevertheless, Order 51 rule 3 provides a cover if the last day within which an action is to be taken is a day when the offices are closed.

Order 51 rule 3 provides;

**Time expiring on Sunday or close day.**

*"Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof the act or proceeding cannot be done or taken on that day, that act or proceeding shall, so far as regards the time of doing or taking the act or proceeding, be held to be duly done or taken if done or taken on the day on which the offices shall next be open".*

The last day of filing in this case was a Friday. Even if the last date of filing the amendment was on a Sunday as counsel for the plaintiffs submits, they would still have been out of time.

In essence, the amended plaint was filled out of time. The net effect is that all the amendments that were done in the plaint are of no effect. I would have expected the plaintiff to apply for extension of time but this was not done. I shall nevertheless address the objections as raised by counsel for the second defendant.

Turning to the amendments, Counsel for the defendants submitted that the order that was issued to the plaintiffs allowing them to amend their plaint did not give any directions to remove any other plaintiff apart from the then 3<sup>rd</sup> plaintiff who had died. Counsel submitted that the original plaint had four plaintiffs wherein the 2<sup>nd</sup> plaintiff then was a one Prince David Namugala Mawanda, who the plaintiffs omitted his name from the amendment without any directions by court to do so.



While reading the proceedings and ruling in MA-654-2019 I discern that court had established through the plaintiffs, that the then 2<sup>nd</sup> plaintiff, Prince David Namugala Mawanda, had filed a Notice of Withdrawal from the suit. Indeed, copies of the said withdrawals are on record. Court had not granted leave however, to him to withdraw from the suit. The omission of the second plaintiff from the amended plaint was therefore, irregular.

What remains therefore, is for this court to grant leave to withdraw from the proceedings. Any withdrawal after the pleadings have been served and action taken on them attracts costs in accordance with the provisions of Order 25 rule 1 and 2 of the CPR. I therefore, grant leave to withdraw and reserve the order as to costs after resolving other issues. A party is free to choose whether to bring a matter to Court or not.

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants also submitted that the order of court only allowed inclusion of the properties in annexure A, but the plaintiffs, contrary to the court's order, included paragraphs 10(a)(c) and 11 in their amendment. In reply counsel for the plaintiffs submitted that the spirit and purpose of the contents in the amended plaint was to include facts relating to all the estate properties detailing Kyadondo Block 273 Land at Masajja which formed part of the private property of the estate of the late Sir Daudi Chwa II which were wrongfully transferred and/or registered in the name of the 1<sup>st</sup> defendant and in the control and possession of the 2<sup>nd</sup> defendant. In rejoinder Counsel for the defendants submitted that the intended amended plaint and amendment was attached in the plaintiff's affidavit in support in MA-654-2019 which had a list of the properties that the plaintiffs thought were part of the estate of the late Sir Daudi Chwa II. That the inclusion of other facts which was not allowed by the court is without any basis and a confirmation that the plaintiffs are in contempt of court order.

I have already stated that the amendments were made out of time and are of no legal effect. I need not delve so much into that aspect.

### **Locus Standi**

Counsel for the defendants raised an issue of the plaintiff's locus standi to institute the suit. Counsel submitted that the 1<sup>st</sup> plaintiff is not an appointed administrator of the estate of Ssekabaka Daudi Chwa II and did not have leave of court to sue on behalf of the entire family of Sir Daudi Chwa II. Counsel also stated that the 2<sup>nd</sup> plaintiff did not attach letters of administration to prove that she was a surviving administrator of the estate of Daudi Chwa II. Further that the 2<sup>nd</sup> plaintiff stated that she was the only surviving administrator of the estate of the late but the record shows that in the plaint filed on 31<sup>st</sup> August 2017 the 2<sup>nd</sup> plaintiff had stated that she was a joint administrator with two others, one later died and was removed from the suit and the other who withdrew from the suit.

Counsel for the plaintiff submitted that preliminary points of objection should only be founded purely on law argued on the face of the pleadings. Where court has to go beyond the pleadings and rely on evidence adduced, or where the objection seeks the exercise of judicial discretion, it is improper to do so by way of preliminary points of objection. It must wait the trial to determine it. He referred to the case of *Faridah Nantale Vs Attorney General and 5 Ors HCCS No 97 of 2011*.

Admittedly the 2<sup>nd</sup> plaintiff had previously jointly instituted the suit with two other administrators Paragraph 2 of the amended plaint states;

*"The 2<sup>nd</sup> plaintiff is a female adult Ugandan of sound mind and brings this suit in both the capacity of surviving administrator of the estate of the late H.R.H Sir Daudi Chwa II as well as a beneficiary and lineal descendant of the said estate ...."*



The 2<sup>nd</sup> plaintiff herein has unfortunately not adduced any evidence to prove that she acquired any letters of administration for her late father's estate. What is on record is her assertion that she is a surviving administrator of the estate of the late Daudi Chwa II.

I am surprised that counsel for the plaintiff thinks this is not a question of law. Section 191 of the Succession Act provides;

*"Except as hereafter provided, but subject to section 4 of the Administrator General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice unless letters of administration have first been granted by a court of competent jurisdiction."*

The reading of the above section forestalls any right to claim for property of an intestate until letters of administration in respect of his or her estate have been duly granted. In other words, section 191 negates *locus standi* to claim for property of an intestate until letters of administration shall have been granted in respect of such estate. The law thus seems to protect an intestate's estate from claims from persons that have not been established as beneficiaries thereof. I do not subscribe to the view by counsel for the plaintiff that there was no need to annex letters of administration to the pleadings. The purpose of annexing such documents is intended to enable the opposite party to analyze them and establish their authenticity before the trial. It is intended to avoid ambush and not to delay the trial. This suit has been in court for a while since 2017 and to state that this was an omission is insincere. Even the plaint filed on the 31<sup>st</sup> of August 2017 does not have this document. As a party who has come to court in the capacity as an administrator to an estate, the 2<sup>nd</sup> plaintiff ought to have endeavored to produce the said letters even after having being directed by court to do so. She cannot therefore, sue on behalf of the family. This is made worse



by the fact that her alleged co-administrator Prince David Namugala was removed from the suit by the stroke of amendment.

That said, the case of Israel Kabwa vs. Martin Banoba Musiga Civil Appeal NO.52 of 1995 recognized legitimate beneficiaries' right to protect their interest in an intestate's estate. In that case the respondent who was a customary heir and son to an intestate had developments on the land in question. Although he did not possess letters of administration at the time, he successfully instituted legal proceedings for the cancellation of the appellant's title to the suit land on account of fraud. The appellant's first ground of appeal was whether or not the respondent had *locus standi* to institute legal proceedings against him. It was held:

*"The respondent's locus standi is founded on his being the heir and son of his late father. In terms of section 28(1)(a) and 28(2) of the Succession Act as amended, the respondent could very well be entitled to 76% or more of the estate of his father. He is thus defending his interest. His position as heir has been enhanced by the belated grant of letters of administration in that way. Kotham's case is irrelevant. Therefore I think that ground one should fail. It would still fail in my view even if no letters of administration had been obtained because the respondent's right to the land and his developments thereon do not depend on letters of administration."*

The above decision indicates that a son and customary heir to the deceased is a legally recognized beneficiary to his estate by virtue of Section 27 of the Succession Act. The respondent in that case had an interest in protecting or preserving the deceased's estate and therefore did have *locus standi* to sue without first obtaining letters of administration. The principle therein is that a beneficiary of an estate as prescribed under section 27 of the Succession Act does have *locus standi* to institute legal proceedings for purposes of protecting or preserving an estate. Beneficiaries

of an estate of a male intestate, as is the case presently, include lineal descendants of the intestate. See: Section 27(1) of the Succession Act.

In the instant case the 2<sup>nd</sup> plaintiff as a daughter to the late Daudi Chwa II is in the direct descending line of the deceased and therefore a lineal descendant. She has all the reasons to protect her interest in the estate and it is this reason why she was added as a party to the suit. Her situation however, is different from the case of Israel Kabwa cited above. While Kabwa had a presence on the land and was a customary heir, it is not the same situation here.

In regards to the 1<sup>st</sup> plaintiff he has always stated that he was the grandson of the late Sir Daudi Chwa II and was also the administrator of the estate of his late father Prince Kagolo Kimera, who was the late Sir Daudi Chwa's son and was suing in that capacity. At no point in the pleadings has the 1<sup>st</sup> plaintiff alleged that he is an appointed administrator of the estate of Ssekabaka Daudi Chwa II and was suing on behalf of the entire family of Sir Daudi Chwa II (*his late grandfather*) as alleged by counsel for the defendant. The 1<sup>st</sup> plaintiff also did not attach any document to prove this in the amended plaint. In that particular plaint is annexure A and B which, he alleged, were proof showing that he was the grandson of the late Sir Daudi Chwa II and Letters of Administration he had been granted by court to administer the estate of his late father Prince Kagolo Kimera. I have carefully analyzed the said annexures. Annexure A is a correspondence from Makerere University Institute of Languages which reads, and I quote,

*"Princes and princesses who are the grandchildren of the late kabaka daudi CHWA II*

*The Chief Prince of Buganda, George William Mawanda Chwa produced the following princes and princesses;.....*

Under number 10 on the list is the name of the 1<sup>st</sup> plaintiff's late father Prince Henry Kimera. In essence therefore the 1<sup>st</sup> plaintiff's father was the grandchild to the

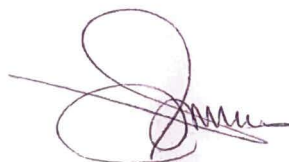


late Daudi Chwa II and not a son. It follows therefore that the 1<sup>st</sup> plaintiff is a great grandchild of the late Daudi Chwa II and is therefore a 3<sup>rd</sup> degree beneficiary. **Section 2 (b) of the Succession Act Cap 162** defines "*lineal descendants*" to include legitimate, illegitimate and adopted children, but does not include grandchildren. The 1<sup>st</sup> plaintiff as a great grandchild does not therefore does not qualify as a lineal descendant. Additionally, **Section 86(d) of the Succession Act Cap 162** provides that "*grandchildren*" applies only to lineal descendants in the second degree of the person whose children or grandchildren are spoken of. That too the 1<sup>st</sup> plaintiff does not qualify. Suffice to note that the late Daudi Chwa II was survived by children. From his demise in 1939 none of his children brought forward any allegations. It is quite baffling why the plaintiff as a 3<sup>rd</sup> descendant would in turn up in 2017 to claim property which does not even belong to him. Unfortunately, courts have been labored to face numerous land disputes like the instant one where even the very last descendants to a deceased arise decades later to bring claims in the pretext of '*fighting*' for what they assume to belong to them. This must stop. The law on succession was designed in a detailed way to protect the courts from such scenarios. In the premises therefore I find that both the plaintiffs did not have *locus standi* to bring this suit. This objection therefore succeeds. Upholding this objection has the effect of disposing off the matter. I shall however still determine the other objections raised.

The pleadings do not show that his father had an interest in the disputed land and no mention of his father's presence on the land is alluded to.

#### **Cause of action**

Counsel for the defendants also submitted that **the plaint does not disclose a cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> defendants.** Counsel stated that the plaintiffs seek

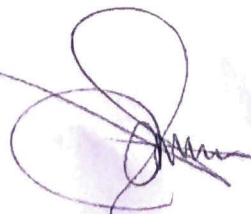


cancellation of the certificates of titles of the defendants but did not attach any proof of ownership of the same. That there was no single document showing how the suit land formerly belonged to the estate of the late Daudi Chwa II. Further that the gazetting of the suit land as a private estate of the late Daudi Chwa II as stated by the plaintiffs does not deprive the 1<sup>st</sup> defendant of his ownership rights under the RTA. Additionally, that the gazetting was pursuant to a consent judgment in MA-278-2015 between Kabaka of Buganda Vs Wameli & Co. Advocates which was set aside and declared null and void by the High Court Family Division. Counsel also stated that under paragraph 11 (I) (i-iv) of the amended plaint, the plaintiffs attempted to allege fraud without giving the details and particulars on how the 1<sup>st</sup> defendant was fraudulent. That the particulars stated are general and not particulars to the 1<sup>st</sup> defendant's action since the return of the kingdom properties. Counsel citing a wealth of authorities stated that the plaintiffs did not plead how the registered transferee is guilty of fraud or how he took benefit in order to warrant cancellation of his title.

In reply counsel for the plaintiffs submitted that the amended plaint shows that through the actions of the 3<sup>rd</sup> and 4<sup>th</sup> defendants, the 1<sup>st</sup> defendant was illustrious enough to be registered upon the suit land thereby taking advantage of the fraud and the 2<sup>nd</sup> defendant had reasonable cause to know of the fraud.

In rejoinder, counsel for the defendants submitted that from the plaint, the plaintiffs have not adduced any evidence to show how the suit land belonged to the estate of the late Sir Daudi Chwa the II. All the plaintiff have attached on the plaint are titles which clearly show that the suit land was Registered in Uganda Land Commission as far as 1924 and later registered into the names of the 1<sup>st</sup> defendant as an official estate of the Kingdom of Buganda, in 1993 which fact has not been challenged by either production of a certificate of title in the names of Sir Daudi Chwa II or otherwise.

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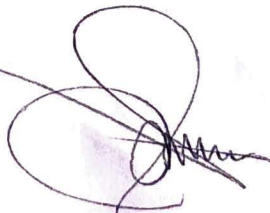


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I have looked at the particulars of fraud in the plaintiffs' amended pleadings. It is well settled that fraud must be attributable to the transferee either directly or by necessary implication and that the transferee must be guilty of some fraudulent act or must have known of such acts by somebody else and taken advantage of it. (See: Kampala Bottlers Vs. Damanico (U) Ltd SCCA No. 22/1992).

Under paragraphs iv the plaintiffs stated that the proprietorship of Mailo Register Volume 12 and Folio 11 or part thereof was obtained without instruments of transfer. Looking at the titles however, it is clear that they were vested under Statute No. 8 of 1993. There was no need for the instrument No as this was vestment by Law and the law was stated in the title. The plaintiffs did not specifically mention the 1<sup>st</sup> and 2<sup>nd</sup> defendants as having been responsible for that. Given that no evidence was adduced as to the registration of the said land in the names of the late Daudi Chwa, it is baffling that we can even think of a nexus between the plaintiffs and the land in dispute. The various titles under dispute show that they were vested in the Uganda Land Commission in 1924. There are various leases on these titles. I could therefore, not discern from the pleadings how all the defendants come into the picture as fraudsters. The late Daudi Chwa died much later than this period of registration. I concur with counsel for the defendants that there is no cause of action disclosed against the defendants jointly and severally. Fraud must be attributed to the transferee. The pleadings do not show how the transferee was responsible for government returning the titles to it. I have looked at the particulars of fraud in the plaintiffs amended pleadings. It is well settled law that fraud must be attributable to the transferee either directly or by necessary implication and that the transferee must be guilty of some fraudulent act or must have known of such acts by somebody else and taken advantage of it. (See: Kampala Bottlers Vs. Damanico (U) Ltd SCCA No. 22/1992). In the instant case the plaintiffs failed to plead how the 1<sup>st</sup> and 2<sup>nd</sup> defendants fraudulently acquired the suit land. The 1<sup>st</sup> defendant has attached



numerous land titles to prove his legal ownership of the suit land. The suit land was restored as part of the kingdom properties to the 1<sup>st</sup> defendant in 1993 by the traditional rulers (return of assets and properties) statutes. The 1<sup>st</sup> defendant later proceeded to register the same. How then can the 1<sup>st</sup> defendant be said to have been fraudulent when it only registered what was given to it?

### **Limitation of action**

Counsel for the defendants raised a crucial objection on limitation for recovery of land. Counsel citing the case of **Fredrick James Jjundu & anor Vs Mandhvari Group Ltd & anor HCCS No. 508-2014**, submitted that in determining this objection court is only required to consider the pleadings of both parties. Counsel stated that Section 5 of the Limitation Act provides that actions for recovery of land must be brought before the expiration of twelve years from the date on which the right of action accrued. That the plaintiffs' amended plaint was filed on 23<sup>rd</sup> June 2020 yet the suit land which they allege to be forming part of the estate of the late Daudi Chwa II was restored and registered into the 2<sup>nd</sup> defendant's name in 1993. He stated that this was 27 years later and way after the limitation period of 12 years provided for to seek recovery of land. Counsel, citing a wealth of authorities, further submitted that, the defendant's certificates of titles for the suit land date as far as 1924 and have several leases issued to various lessees thereafter. That since then, neither did the late Sir Daudi Chwa II, who was alive until 1939, nor did his lineal descendants challenged the 1<sup>st</sup> defendant's proprietorship. Citing the case of **Swaleh Bin Nasiri Vs Salim Bin Swaleh Bin Hussein (1960) 1 EA 426**, Counsel stated that the right to recover the estate of the late Sir Daudi Chwa II started running from the date of his death and remained available for a period of 12 years. Counsel for the defendants also pointed out exceptions to the general rule in Section 5 of the Limitation Act. Counsel stated that plaintiffs cannot benefit from the exception of

fraud either as provided for under Section 25 of the Limitation Act. He submitted that the plaintiffs made no mention anywhere in their amended plaint of when they became aware of the "fraud" and how the 1<sup>st</sup> or 2<sup>nd</sup> defendants were involved in any fraud in the acquisition of the suit land.

In reply counsel for the plaintiffs, relying on Section 25 of the Limitation Act, submitted that the plaintiffs aver that they learnt of the fraud in 2016 when the 1<sup>st</sup> defendant was seeking compensation from UNRA as the registered proprietor for the Kampala-Jinja express highway which goes through the suit land. That it was this unwarranted and unfounded claim of ownership upon the suit land (Kyadondo Block 273) which sparked suspicions among the plaintiffs and put in motion the investigations into the properties of the estate of the late Sir Daudi Chwa II, which proved the 1<sup>st</sup> defendant's fraudulent acts to withdraw the certificate of title for Block 273 from circulation.

In rejoinder, counsel for the defendants submitted that the allegations of fraud cannot be sustained when the suit land was returned to the 1<sup>st</sup> defendant by virtue of the provisions of the statute No 8 of 1993 and subsequently the 1<sup>st</sup> defendant was registered as such. The issue of Fraud was only introduced in the amended plaint to circumvent the legal provisions of limitation.

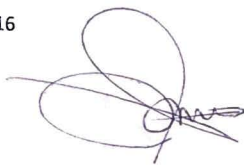
I have considered the arguments of both parties in this matter and appreciated the relevant laws and authorities cited. The law on the limitation period to bring an action of recovery of land is well settled. **Section 5 of the Limitation Act** provides that;

*"No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her, if it first accrued to some person through whom he or she claims, to that person."*



The question that is left to be determined here is at what point did time start running for the plaintiffs to bring the suit? Was it after the death of Sir Daudi Chwa II in 1939 or immediately after the 1<sup>st</sup> defendant was registered in the title in 1993? Counsel for the defendants submitted that the 1<sup>st</sup> defendant's title date way back in 1924 and have several leases issued to various lessees thereafter. That this was way before the demise of Daudi Chwa II but neither he nor his beneficiaries ever challenge the same. Further that the late Daudi Chwa II had left behind several beneficiaries to his estate but none of them challenged the 1<sup>st</sup> defendant's proprietorship except when the plaintiffs brought this suit in 2017. I find this argument convincing. The certificates of title for the suit land date back to 1924 and various leases were issued on the titles after 1924. The leases were actually not issued by Daudi Chwa the II. Daudi Chwa II did not challenge the said leases. The beneficiaries of Daudi Chwa cannot come now almost a century later (93 years) to challenge the proprietorship which their father did not challenge. S. 15 of the limitation Act leads credence to this argument. It should be noted that Daudi Chwa dies in 1939 but he had not attempted to challenge the 1<sup>st</sup> defendant's proprietorship. His lineal descendants therefore, cannot claim to have a superior claim of ring than him.

I have noted of late a resurgence of claims by grandchildren of many deceased persons, many of whom allege fraud when in actual fact the alleged fraudsters are sometimes dead. This resurgence is caused by the ever limited resource called land that cannot expand as population surges. The value of the land has increased greatly and it is attracting all sorts of claims in court. To circumvent the limitation period, fraud is always invoked as a cover for machinations to disposes land from the rightful owners. Courts should stand up to stem this fraud guised in the name of the law to stem fraud. It is clear from the pleadings that the Late Daudi Chwa died in 1939. He left children and grandchildren at the time of his death. Those who were alive at the time have never brought any claim for a period of more than half a



century. It is only in 2017 that a few of them remembered that there is an estate in which they have an interest after they learnt of UNRA compensation. This suit is not about learning the existence of fraud. It is about partaking in the share of compensation. The period of limitation started running in 1939. The 12 years lapsed in 1951 and the limitation set in. Even when government expropriated properties of the kingdom in 1967, the limitation period had long set in. Returning the properties to the 1<sup>st</sup> defendant cannot therefore, amount to fraud on the part of the 1<sup>st</sup> and 2<sup>nd</sup> defendants but also on the part of the 3<sup>rd</sup> and 4<sup>th</sup> defendants. I do not need magic to discern from the pleadings that a serious person with such a big estate who cannot know what is happening to such an estate for 93 years is not worth believing that he/she learnt of fraud only in 2017 from 1939.

With the above deliberations I find merit in the objections and I hereby uphold them accordingly. The suit is accordingly dismissed with costs to the defendants.

I so order.

Dated at Kampala this 28<sup>th</sup> day of September 2020

Flavian Zeija

**PRINCIPAL JUDGE**

